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LEGISLATIVE PROPOSAL

REGARDING ICE DETAINERS

April 24, 2019

The North Carolina Sheriffs' Association is opposed to illegal immigration and supports enforcement of the laws against illegal immigration.

Further, the Association supports cooperation between sheriffs and all local, state and federal law enforcement agencies.

The Association requested that the General Assembly work with us cooperatively to craft a mutually acceptable alternative to House Bill 370 and Senate Bill 637.

After careful analysis and thorough consideration, the North Carolina Sheriffs' Association has submitted the proposed legislative language below for consideration by the North Carolina General Assembly. The Association has requested that this language be substituted for and replace the entire contents of House Bill 370 and Senate Bill 637.

This proposal is designed to protect the 4th Amendment due process rights of the person in custody while providing maximum public safety for the community. The 96-hour time period reflects the realities of law-enforcement operations and is identical to the time period in existing law for providing a person in custody with a "first appearance" before a judicial official.

It is the Association's position that this proposed language provides an appropriate and careful balance under the Constitution for the rights of the accused and for the public safety of our communities.

For these reasons, the Association SUPPORTS – HIGH PRIORITY enactment of this proposal by the North Carolina General Assembly.



100% Membership

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The North Carolina Sheriffs' Association is a Non-Profit, tax exempt organization recognized by the I.R.S.

IT IS PROPOSED THAT:

- (1) the entire contents of HB 370 and SB 637 be removed; and**
- (2) the following provisions be inserted as the new contents of HB 370 and SB 637.**

SECTION 1. G. S. 162-62 reads as rewritten:

§ 162-62. Legal status of prisoners.

- (a) When any person charged with a ~~felony or an impaired driving criminal~~ offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite jail/work release unit, the administrator or other person in charge of the facility shall attempt to determine if the prisoner is a legal resident of the United States by an inquiry of the prisoner, or by examination of any relevant documents, or both.
- (b) If the administrator or other person in charge of the facility is unable to determine if that prisoner is a legal resident or citizen of the United States or its territories, the administrator or other person in charge of the facility holding the ~~prisoner, where possible, prisoner~~ shall make a query of Immigration and Customs Enforcement of the United States Department of Homeland Security. If the prisoner has not been lawfully admitted to the United States, the United States Department of Homeland Security will have been notified of the prisoner's status and confinement at the facility by its receipt of the query from the facility.
- (c) Nothing in ~~this section subsections (a) and (b)~~ shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.
- (d) Repealed by Session Laws 2010-97, s. 12, effective July 20, 2010.
- (e) When any person charged with a criminal offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite jail/work release unit, and is otherwise eligible for release and the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the Department of Homeland Security has issued a detainer and administrative warrant that reasonably appear to be for the person in custody, the following shall apply:
- (1) The person shall, upon receipt of the detainer and administrative warrant by the administrator or other person in charge of the facility, without unnecessary delay, and prior to the person's release, be taken before a State judicial official who shall be provided with the detainer and administrative warrant, or a copy thereof.
- (2) The detainer and administrative warrant from Immigration and Customs Enforcement of the Department of Homeland Security shall create a rebuttable presumption that there is probable cause to believe the person so named in the detainer and administrative warrant is present in the United States unlawfully and is thereby subject to detention and removal by federal immigration authorities, and it therefore constitutes sufficient evidence for issuance of

a Magistrate's Order committing the person to the custody of the sheriff to be retained in custody as provided in this subsection.

(3) If, after a hearing, the judicial official determines that probable cause exists that: (1) there does exist a valid Immigration and Customs Enforcement detainer and administrative warrant; and (2) the person appearing before the judicial official is the same person as the person subject to the detainer and administrative warrant, the judicial official shall issue a Magistrate's Order directing that the person be held in custody without conditions of pretrial release until custody of the person is assumed by Immigration and Customs Enforcement of the Department of Homeland Security, or the expiration of 96 hours from the issuance of the Magistrate's Order, whichever occurs first.

(4) If the hearing provided for by sub-subsection (3) is waived by the person in custody, the Magistrate's Order shall nevertheless be issued.

(5) Upon the expiration of 96 hours from the issuance of the Magistrate's Order, if Immigration and Customs Enforcement of the Department of Homeland Security has not yet assumed custody of the person, the order expires, and the person shall be released from custody unless continued custody is required by other legal process.

(6) No State or local law enforcement officer or agency shall have criminal or civil liability for any action taken pursuant to a Magistrate's Order issued pursuant to this subsection.

SECTION 2. This act becomes effective December 1, 2019.